



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,400	11/06/2001	Roger Pellenc	1811-2	4957

24106 7590 01/13/2004

HARRISON & EGBERT
412 MAIN STREET
7TH FLOOR
HOUSTON, TX 77002

EXAMINER

TORRES, ALICIA M

ART UNIT	PAPER NUMBER
----------	--------------

3671

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,400

Applicant(s)

PELLENC ET AL.

Examiner

Alicia M Torres

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 20 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 21-25 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Couser in view of Stikeleather.

Couser discloses a removable universal tool holder for mounting on a straddling vineyard tractor for agriucultural work in tree or shrub plantations, the tool holder comprising:

A primary chassis (12) having means thereon for removable mounting to the tractor;

A first secondary chassis (16) having a universal three-point hitch mechanism connected thereto;

A second secondary chassis (20) having a universal three-point hitch mechanism connected thereto;

A first arm (14) directly connected to and extending between the primary chassis (12) and the first secondary chassis (16);

A second arm (18) directly connected to and extending between the primary chassis (12) and the secondary chassis (23), each of the first and second arms being coupled to the primary chassis (12) by a joint means (38);

A first pivoting means (45) cooperative with the primary chassis (12) and with the first arm (14), for pivoting the first arm in the approximately vertical plane and in the approximately horizontal plane, as per claim 20; and

A stand mounting means (see figure 2, unnumbered) interconnected to the primary chassis, the stand mounting means for removably receiving a stand therein, as per claim 28.

However, Couser fails to disclose wherein the joint means allows for pivoting the respective arm in an approximately horizontal plane; and

A second pivoting means cooperative with the primary chassis and with the second arm for pivoting the second arm in the approximately vertical plane and in the approximately horizontal plane.

Stikeleather discloses a tractor hitch with a joint means (see column 5, lines 13-15) for pivoting the arm in an approximately horizontal plane; and

A second pivoting means (see column 5, lines 13-15) cooperative with the primary chassis (3) and with the second arm (10) for pivoting the second arm (10) in the approximately vertical plane and in the approximately horizontal plane.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the vertical and horizontal movement of Stikeleather on the apparatus of Couser in order to provide improved implement control.

3. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Couser and Stikeleather as applied to claim 20 above, and further in view of Ellinger.

The device is disclosed as applied to claim 20 above. However, Couser and Stikeleather fail to disclose a detecting means connected to and oriented downwardly from respectively the first and second chassis, the detecting means for monitoring a height of the tool holder.

Ellinger discloses a coupling chassis (12) comprised of a detector (42) oriented downwardly from respectively the first and second chassis, the detecting means (42) for monitoring the height of the tool holder (46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the sensor of Ellinger on the device of Couser and Stikeleather in order to automatically maintain the height of the implement relative to the ground.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Couser and Stikeleather as applied to claim 20 above, and further in view of Bobard.

Couser and Bobard disclose the device as seen above. However, the combination fails to disclose a hydraulic motor connected to each of the first and second secondary chassis, the hydraulic motor having an output shaft with a coupling at an end thereof.

Bobard discloses wherein the secondary coupling chassis (12) is comprised of accommodations for a hydraulic motor having an output shaft that is comprised of a coupling instrument similar to the power take-off shaft of a farm tractor (see column 3, lines 3-7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the accommodations for a hydraulic motor as taught by Bobard on the device of Couser and Stikeleather in order to allow for various types of tool-driving means.

Allowable Subject Matter

5. Claims 21-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed October 31, 2003 have been fully considered but they are not persuasive. In regards to applicant's argument that neither the Couser patent nor the Stikeleather patent describe a device intended for mounting on a straddling vineyard tractor, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. There is no structure provided in the body of the claim that relies on the straddling vineyard tractor. Therefore, the preamble of the claim which states that the removable tool holder is for mounting on a straddling vineyard tractor is simply a recitation of the intended use of the removable tool holder.

7. In regards to the argument that the prior art combination fails to disclose at least one of the elements of the joint means, the first pivoting means, and the second pivoting means, the Stikeleather patent discloses that various types of actuating means might be used to provide this vertical and horizontal movement of the hitch adapter (column 5, lines 13-15), which provides a first pivoting means and a second pivoting means, in addition to the joint means of Couser.

Conclusion

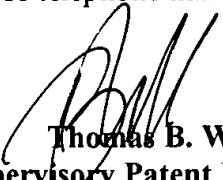
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.


Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671